

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No 9 of 1978

with

SALES TAX REFERENCE NO. 12 OF 1978

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

HASANAND KORUMAL

Versus

THE STATE OF GUJARAT

-----

Appearance:

MR R.D.Pathak for Petitioner

MR H.V.CHHATRAPATI for Respondent No. 1

-----

CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 06/11/98

ORAL JUDGEMENT

These two Sales tax References have come up for hearing in the following circumstances which were referred at the instance of the assessee for opinion of this court under

the Gujarat Sales Tax Act, 1969. In Sales tax Reference No.9/78, the question referred read as under:

"Whether on the facts and in the circumstances of the case, the tribunal was justified in holding that tarpaulins are not prepared from cotton fabrics or textile fabrics and therefore, their sales amounting to Rs.31,575/are not covered by Entry 18 (a) of Schedule II, Part A to the Gujarat Sales Tax Act, 1969, as contended by the applicant but are covered by Entry 13 of Schedule III to the said Act as held by the Sales tax authorities?"

In Sales tax Reference No.12/78, the question referred was as follows :

"Whether on the facts and in the circumstances of the case, the Tribunal is correct in holding that Tarpaulins are not prepared from cotton fabrics or textile fabrics and are therefore not covered by Entry 18(a) of Schedule II, part A to the Gujarat Sales Tax Act, 1969?"

In substance, the two questions raised same issue viz. whether Tarpaulin is a commodity prepared from cotton fabrics or textile fabrics and falls under Entry 18(a) of Schedule II, part A of the Gujarat Sales Tax Act, 1969. The Tribunal has held that Tarpaulins are not articles prepared from cotton fabrics but textile fabrics and, therefore, they are not covered by Entry 18(a) of Schedule II of Part A to the said Act but are covered by Entry 13 of Schedule III to the said Act as held by the sales tax authorities. When the matters were heard in the first instance, the same were decided by a detailed judgment on 15/16-9.1981 by a Division Bench of this court. After detailed discussion, for the purpose of both the cases, in order to bring out the real controversy between the parties, the question was reframed as under :

"Whether on the facts and in the circumstances of the case, the Tribunal is correct in holding that tarpaulins are not articles prepared from cotton fabrics or textile fabrics and therefore not covered by entry 18 (a) of Schedule II of part A to the Gujarat Sales tax Act, 1969 but are covered by entry 13 of Schedule III to the said Act as held by the sales tax authorities?"

The court answered the reframed question in favour of the assessee and against the revenue by holding that the goods may be classified as cotton fabrics under entry 37 of Schedule I and therefore, not liable to tax. Aggrieved by the said decision, the revenue carried the matter to the Supreme court in appeals. The contention raised before the Supreme court was that the contention whether the goods fall under entry 37, Schedule I though was raised before the Tribunal and the Tribunal had disagreed, the same did not form part of the question referred to this court and the High court in exercise of its power to reframe the question could not have widened the scope of Reference for making an inquiry into the applicability of entry 37. The Supreme court without going into the merits of the case, taking into consideration the fact that some arguments may have been addressed to this court on the applicability of entry 37, made the following order :

" It is perhaps true that some argument may have been addressed to the High court on the applicability of the said entry 37 but in the circumstances, we think that it is fair that the judgment and order of the High court should be set aside and the references should be remanded to the High court for being considered afresh. The High court may, if so advised, reframe the question so as to include therein the applicability of the said entry 37 and, after giving to the parties an opportunity to address themselves thereto, answer the question afresh.

This is an old matter and the amount involved is not over large. It shall, therefore, be for the revenue to consider whether it would want to agitate the references afresh before the High court. In the event that it does and is unsuccessful, it shall be open to the revenue to urge the non-applicability of the said entry 37 before this court on all aspects, some of which we have not felt it necessary to consider in view of what we have stated above."

Thus, in pursuance of the order of the Supreme court dated 28.11.1996, these two References have been refiled for hearing.

In the first instance, the court directed the respondent vide its order dated 28.4.1998 whether they want to re-agitate the question by reconsidering the decision already pronounced by this court by answering the

question with references to entry 37.

Mr.Chhatrapati,learned counsel for the respondent-State of Gujarat,has stated on the basis of written instructions received by him, that the State Government does not wish to agitate the matter any further ,however,with the request that the question may be reframed to include a reference to applicability of entry 37 as well, so as to make the earlier order in conformity with the scope of the question. In the aforesaid circumstances, the question for answering the Reference is reframed as under :

"Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that Tarpaulins are not articles prepared from cotton fabrics but textile fabrics and therefore,not covered by entry No.16(a) of Schedule II ,part A of the Gujarat Sales Tax Act,1969 but are covered under entry 37 of Schedule I and,therefore, not liable to tax ?"

As the State Government does not wish to reagitate the issue, the aforesaid question is answered, for the reasons detailed in earlier decision of this court on15/16-9-1991 ,in favour of the assessee and against the revenue ,by holding that the goods should be classified as cotton fabrics falling under entry 37 ,Schedule I and,therefore,not liable to tax. There shall be no order as to costs.

--